***THE HONOURABLE SRI JUSTICE G.BIKSHAPATHY**

AND

***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

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+Writ Petition Nos. 15716 OF 2004 AND Writ Petition No.22354 of 2004

% 13-04-2005

#Atluri Purushotham in W.P.15716 of 2004

1. P.G.K.Murthy and Others in W.P.22354 of 2004 …Petitioners

VS.

$ Vijayawada-Guntur-Tenali-Mangalaigiri Urban Development Authority Rep. By Vice-Chairman, Vijayawada and others.

…Respondents

! COUNSEL FOR THE PETITINERS :MR.M.V.DURGA PRASAD AND

MR. B.V.SUBBAIAH

^ COUNSEL FOR THE RESPONDENTS : G.P. FOR MUNICIPAL . . . ADMN. AND URBAN DEVELOPMENT AND MR. .. T.S.VENKATARAMANA

< Gist :

> Head Note :

? CITATIONS :

1. 2002(3) Alt 536 (D.B.)

2. AIR 1955 SC 549
3. 200(7) SCC 425
4. AIR 1997 SUPREME COURT 128
5. AIR 1998 SUPREME COURT 1703
6. (2000) 7 Supreme Court Cases 425
7. SCC 2004 (6) 588
8. AIR 1956 SC 110
9. AIR 1993 ANDHRA PRADESH 20
10. 1997 (2) ALD 115
11. 1972 (2) APLJ (Short notes) 54
12. 2000 (4) ALD 625
13. AIR 2005 SC 1
14. AIR 2001 SC 1409
15. 1981 (1) ALT 46
16. AIR 1952 SC 16
17. 1994 (3) ALT 73 (F.B.)
18. 2005(2) ALD 10 (SC)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY THIS THE THIRTEENTH DAY OF APRIL TWO THOUSAND AND FIVE

PRESENT

THE HONOURABLER SRI JUSTICE G.BIKSHAPATHY

AND

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO : 15716 of 2004

AND

WRIT PETITION No. 22354 OF 2004

WRIT PETITION NO : 15716 of 2004

Between:

Atluri Purushotham, S/o Sri Veeraraghavaiah
R/o Gunadala Centre, Vijayawada-4

..... PETITIONER

AND

1 Vijayawada-Guntur-Tenali-Mangaligiri Urban Development Authority, rep by its Vice-Chairman,Lenin Centre, Eluru Road, Vijayawada
2 Vijayawada Municipal Corporation, rep by its Commissioner, Vijayawada-1
3 P.G.K. Murthy S/o Sri P.S. R. Rao Chief Promoter/Builder of Homewell Constructions, 45-1-3/2, Gundadala, Vijayawada-4
4 Uday Shanker, S/o Sri V. Nageswar C/o P.G. K. Murthy 45-1-3/2, Gunadala, Vijayawada-4
5 Harichandana W/o Sri A. Madhusudhana Rao C/o P.G. K. Murthy 45-1-3/2, . Gunadala,
Vijayawada-4

3 to 5 are R/o H. No. 45-1-3/2, Gunadala Centre, Vijayawada-
6 The Government of Andhra Pradesh, rep by its Secretary, Municipal . .. . Administration, Secretariat Building, Secretariat, Hyderabad
7 The Director, Fire Services, A.P. Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandmaus, declaring the G.O.Ms. No. 33 MA, Municipal Administration and Urban Development (M2) Department, dated 03-02-2001 as illegal and contrary to the Provisions of the A.P. Urban Areas (Development) Act, 1975 and the Hyderabad Municipal Corporation Act, 1955, A.P. Fire Services Act, 1999 and A.P. Apartments Act, 1987 and the rules made there under and further declare that the plan sanctioned by the first Respondent vide file No. Rc C2/906/04 and permit bearing B.P. No. 121/4/VJA, dated 29-07-2004 as illegal and further direct the respondents not to make or allow to make as the case may be any constructions in the premises bearing No. 45-1-3/2, Gunadala, Vijayawada, without maintaining the minimum set backs of four meters around the proposed building of the respondents 3 to 5 herein, and obtaining NOC from the seventh Respondent

Counsel for the Petitioner:MR.M.V.DURGA PRASAD

Counsel for the Respondent No.1: MR.P.M.GOPALA RAO, S.C.FOR URBAN DEVELOPMENT AUTH.

Counsel for the Respondent No.2: Mr. T.S.VENKATARAMANA, S.C. FOR V.M.C.

Counsel for the Respondents NO. 3 to 5: MR. B.V.SUBBAIAH

Counsel for the Respondent No.: GP FOR MUNCIPAL ADMN. & URBAN DEV.

WRIT PETITION NO : 22354 of 2004

Between:

1 P.G.K. Murthy, S/o. Sri P.S.R.Rao,
Builder of Homewell Constructions H.No. 45-1-3/2, Gunadala,
Vijayawada - 4.

2 Uday Shankar, S/o. Sri V. Nageswar,
H.No. 45-1-3/2, Gunadala, Vijayawada - 4.
3 Harichandana, W/o. Sri A. Madhusudhana Rao,
H.No. 45-1-3/2, Gunadala, Vijayawada - 4.

..... PETITIONERS

AND

1 The Vijayawada-Guntur-Tenali - Mangalagiri, Urban Development . . Authority,
Rep by its Vice-Chairman, Line Center, Eluru Road,
Vijayawada.
2 The Vijayawada Municipal Corporation,
Rep by its Commissioner, Vijayawada-1.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of "Writ of Mandamus" declaring the action of the respondents in issuing proceedings No. R.C. C2-906/2004, dt. 23-9-2004, through which the writ petitioners buidling permission was cancelled, as violative of G.O.Ms.NO. 423 MA dt. 31--07-1998 and also violative of G.O.Ms.NO. 33 MA dt. 3-02-2002, and also violative of G.O.Ms.NO. 484 MA dt. 1-11-2002, and also violative of principals of Natural Justice and also violative of Article 14, 19 and 21 of the constitution of India, and to pass such other order

Counsel for the Petitioner:MR.B.V.SUBBAIAH

Counsel FOR THE respondent No.1: MR. P.M. GOPALA RAO.

Counsel for the Respondent No.2 .: MR.T.S.VENKATARAMANA

S.C. for V.M.C.

The Court made the following :

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COMMON ORDER: (Per the Hon'ble Sri Justice P.S.Narayana)

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1. One Sri Atluri Purushotham, the Writ Petitioner in W.P.No. 15716 of 2004 had set the law into motion by questioning G.O.Ms. 33 M.A., Municipal Administration and Urban Development (M2) Department, dated 3-2-2001 and also sanction plan issued by Respondent No.1. The 1st respondent is Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority, and the 2nd respondent is Vijayawada Municipal Corporation. Respondents No. 3 to 5 are the parties who obtained the sanctioned plan. Respondent No.6 is Government of Andhra Pradesh, represented by Secretary Municipal Administration.

2. The writ petitioner had prayed for a relief of Writ of Mandamus declaring the G.O.Ms.No.33 MA, Municipal Administration and Urban Development (M2) Department, dated 3-2-2001, as illegal and contrary to the provisions of the A.P. Urban Areas (Development) Act, 1975 and the Hyderabad Municipal Corporation Act, 1955, A.P. Fire Services Act, 1999 and A.P. Apartments Act, 1987 and the rules made there under and further declare that the plan sanctioned by the 1st Respondent Vide File NO. RC C2/906/04 and permit bearing B.P.No.121/4/VJA, dated 29-7-2004 as illegal and further direct the Respondents not to make or allow to make as the case may be any constructions in the premises bearing No. 45-1-3/2, Gunadala, Vijayawada, without maintaining the minimum set backs of four metres around the proposed building of the Respondents 3 to 5 herein and obtaining NOC from the 7th respondent and to pass such other orders in the circumstances of the case.

3. Respondents 3 to 5 herein filed Writ Petition No. 22354 of 2004 praying for issuance of writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in issuing proceedings No.R.C.C2-906, dated 23-9-2004, through which the writ petitioners' building permission was cancelled, as violative of G.O.Ms.No.423 MA dated 31-7-1998 and also violative of G.O.Ms. No.33 MA dated 3-2-2002, and also violative of G.O.Ms.No.484 MA dated 1-11-2002, and also violative of Principles of Natural Justice and also violative of Articles 14,19 and 21 of the Constitution of India and to pass such other order in the circumstances of the case.

4. The writ petitioner in W.P.No.15716 of 2004 was impleaded as Respondent NO.3 in Writ Petitioner No. 22354 of 2004 and this writ petition is filed as against

Respondent No.1 and 2, Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority, and Vijayawada Municipal Corporation. (for the purpose of convenience, the parties would be referred to as arrayed in writ petition NO. 15716 of 2004) Since, the parties are virtually the same and the questions involved also being common, both the writ petitions are being disposed of by this common order.

5. It may be relevant to note that initially writ petition No. 15716 of 2004 was disposed of on 23-9-2004. But, however, the same was recalled on 3-12-2004 in Rev.WPMP No.28402 of 2004 and reliance is placed on the judgment just to show the stand taken by the Vijayawada Municipal Corporation at the first instance. It is pertinent to note that the Vijayawada Municipal Corporation had not filed any separate counter affidavit in the present litigation.

6. **SUBMISSIONS OF MR. M.V.DURGA PRASAD**

Mr. M.V.Durga Prasad learned counsel representing the writ petitioner in W.P.No. 15716 of 2004 and Respondent No.3 in Writ Petitioner No. 22354 of 2004 made the following submissions.

7. The learned counsel would maintain that though Public Interest is involved, this is a matter where writ petitioner, as neighbour, had questioned the action of the respondents and the neighbour has locus standi to question the same when the authorities are not acting in accordance with law or there is violation and contravention of the Rules and Regulations relating thereto and the statutory provisions. The learned counsel also would submit that the concerned competent authorities are expected to adhere to law and enforce the law, especially in view of the public interest involved. The learned counsel would also submit that Government has no power to issue G.O.Ms.No.33 MA, Municipal Administration and Urban Development (M2) Department, dated 3-2-2001. The learned counsel had drawn attention of this Court to different provisions of A.P. Urban Areas Development Act, the Rules and Regulations inclusive of the Zoning Regulations, the Provisions of A.P. Apartments (Promotion of Construction and Ownership) Act and certain Rules in relation thereto and also the provisions of A.P. Fire Services Act, 1999. The counsel also made elaborate submissions relating to the strict liability as in Reylands V. Fleeter and would submit that since the sanctioned plan had been initially granted by the Urban Development Authority in contravention of the provisions referred to supra, the cancellation is in accordance with law. Even

otherwise, G.O.Ms.No.33 MA, Municipal Administration and Urban Development (M2) Department dated 3-2-2001 does not disclose the source of power, and the question of delegation would come into play when the Government is having the power. The learned counsel also made submissions relating to the prior approval which is essentially required both under A.P. Apartments Act and A.P. Fire Services Act. The learned counsel had further drawn the attention of this Court to the respective pleadings of the parties and would attack the G.O. aforesaid as arbitrary and unconstitutional. The learned counsel places reliance on several decisions while making elaborate submissions in this regard. The counsel also pointed out the set backs and the contraventions in relation thereto.

8. **SUBMISSIONS OF MR.B.V.SUBBAIAH**

Sri B.V.Subbaiah representing respondents No. 3 to 5 in W.P.No. 15716 of 2004 had taken this Court through the order of cancellation and would submit that this was made without notice and without observing the principles of natural justice. The counsel also would submit that none of the contraventions, which are being ventilated by the present writ petitioner, had been made the grounds in the impugned order of cancellation, which is questioned in Writ Petition No. 22354 of 2004. The learned counsel also submits that the matter in fact came before the First Court on the ground that this is a Public Interest Litigation and in fact no public interest is involved. The learned counsel also would submit that the rights of the neighbours would be limited rights and G.O.Ms. No.33 MA, Municipal Administration and Urban Development (M2) Department, dated 3-2-2001 is based on the policy decision of the Government and it is neither irrational nor against any statutory or constitutional provisions. The learned counsel also would maintain that if any contraventions are made in carrying out the building activity, the competent authorities definitely are at liberty to set right the things by rectifying the same by ordering the removal thereof. The learned counsel also made elaborate submissions relating to the different provisions of the Statues and regulations which already had been referred to supra and also drawn the attention of this Court to certain provisions of the Hyderabad Municipal Corporation Act and ultimately would contend that the Urban Development Authority acted in an arbitrary manner without any reason to cancel the sanction, that too without notice. The mere fact that the first Court recorded stand of the Corporation in the judgment in W.P.No.15716 of 2004 dated

23-9-2004. This would not alter the situation in any way, since the said order was recalled. The learned counsel ultimately would submit that this is just a mala fide action initiated by a neighbour owing to private grievance and hence in view of the private dispute between the parties and in the peculiar facts and circumstances, the cancellation cannot be sustained. Learned counsel also placed reliance on certain decisions to substantiate his contentions.

9 . **SUBMISSIONS MADE BY Mr.P.SRINIVAS, COUNSEL FOR RESPONDENT No.1.**

Learned Standing Counsel appearing for Urban Development Authority had pointed out that in the light of the contentions, inasmuch as power to cancel is there, the power had been exercised in a proper manner. The counsel would also maintain that G.O.Ms. No.33 MA, Municipal Administration and Urban Development (M2) Department dated 3-2-2001 has been issued as a policy decision and the source of power can be traced to Section 59 of Andhra Pradesh Urban Areas Development Act. The learned counsel also would contend that larger public interest should be taken into consideration and it must yield to smaller public interest. The interest of the neighbour is the smaller public interest whereas the policy adopted in G.O.Ms. No.33 is in larger interest.

10. **SUBMISSIONS MADE BY G.P. FOR MUNICIPAL ADMINISTRATION:**

The learned Government Pleader for Municipal Administration had drawn the attention of this Court to the stand taken by the Government and would submit that this is a policy decision and the counsel also had drawn the attention of this Court to the relevant portion of the counter affidavit filed in this regard and would submit that this being a policy decision, the Court should be very slow in interfering with such matters.

11. Heard the counsel on record.

12. The relief prayed for in respect of the writ petition filed by Respondent Nos. 3 to 5 already had been referred to supra. The writ petition No.15716 of 2004 is filed by a

neighbour complaining certain contraventions or violations. Aggrieved by the cancellation of the sanctioned plan, respondent Nos. 3 to 5 filed Writ Petition No.22354 of 2004. The respective stands taken by the authorities in both the writ petitions are virtually the same. It is stated that the writ petitioner in W.P.No.15716 of 2004 is a retired Principal having served as a lecturer in English in several reputed educational institutions including Andhra Layola College, Vijayawada and as a Shakespeare Scholar he translated the complete works of Shakespeare and thus dedicated his retired life to literal activity. It is stated that the writ petitioner purchased land to an extent of 23 ¼ cent equivalent to about 1100 square yards at Gunadala village in the year 1960 and constructed two sheds on the North-Western side of the said land leaving 1 ½ feet area on the North side of the said wall for the purpose of having a bund to support the said wall. Later, the petitioner also constructed a house thereon and has been residing therein. The said area is earmarked for residential purpose in the master plan and no multi-storied buildings are permitted in that area as per the Master Plan and Zonal Development Plan. Further a specific stand is taken by the writ petitioner that respondents Nos.3 to 5 are claiming to be the G.P. Holders in respect of the property abutting the petitioner's premises on its north west side. It was further stated that the respondents Nos. 3 to 5 started construction work. They dug anger holes and pits for the purpose of footings to raise columns just at the distance of one and a half feet from the petitioner's premises, practically leaving nothing as set back. Immediately, the petitioner made representations to the Respondent Nos.1 and 2 personally and as well as in writing. The 2nd respondent gave the petitioner an endorsement Memo stating that the 1st respondent had granted exemption to the Respondents Nos.3 to 5 under G.O.Ms. No.33, dated 3-2-2001 and G.O.Ms.No.484 dated1-11-2002 in respect of set backs and coverage. The petitioner therefore made representations on 3-7-2004, 12-7-2004 and 28-7-2004 clearly stating that even the alleged G.Os did not permit the exemption from maintaining the set backs, till the minimum permissible F.A.R. is achieved, without requirement for any relaxation as per Clause (4) (b) (i) of the said G.O. It also turned out that the endorsement given to the Petitioner dated 1-7-2004 is not true, as alleged in the endorsement, as such permission was in fact given to the Respondents 3 to 5 much later now. Therefore, the 2nd respondent removed all the illegal structures made by the Respondents NO. 3 to 5 in the forenoon of 29-7-2004. However, to the shock and surprise of the petitioner, the 1st respondent released a

plan thereafter with the date of 29-7-2004 sanctioning the plan without any set backs towards the Petitioner's premises. It is further averred that contrary to the usual practices and functioning of the 1st respondent, all the notings on the sanctioned plan from top to bottom bear the same dated i.e. 29-7-2004, which speaks volumes about the manipulations on the part of the Respondents. It is further stated that though the petitioner has been complaining fro the beginning about the absence of set backs, Respondents 1 and 2 have not chosen to give any kind of opportunity of hearing to the petitioner nor they have considered the objections pointed out by the petitioner in his representations, while granting the sanction, particularly about the set backs. Hence, the impugned proceedings are vitiated by violation of principles of natural justice. It is stated that the 1st respondent sanctioned the plan for stilt and five upper floors with thirty three residential apartments in all, illegally. It is further averred that as per the G.O..Ms.No.423 MA and UD (MI) Department dated 31-7-1998 governing the floor area ratio and other standards of building requirements in all the Municipal corporations in the State, the minimum set backs to be left around the building are four meters for any building from 11 to 18 meters of height i.e. stilts plus five floors in a building in a plot up to 1000 square meters. The plot of the Respondents 3 to 5 herein is less than 1000 square meters and the proposed building as per the sanctioned plan is stilt plus five upper floors. Those set backs around the building as required under law, are also necessary for the purpose of safeguarding the easementary rights as to light and air of the neighbours and also for the purpose of crisis management in case of fire accident,. These building rules are made in the public interest which created a vested right in the neighbouring house owners. Further, even the Municipal Corporation Building Bye-laws under G.O.Ms.No.905 dated 7-8-1981 are extended to all the Municipal corporations which are framed in exercise of the statutory power under the Hyderabad Municipal Corporation Act. The A.P. Apartments Act, 1987 and the Rules made there under also provide for the elaborate fire protection requirements. Part IV to X of National Building Code of India are expressly made applicable to all buildings by the Municipal Corporation Building Bye-Laws Act, 1981. Further, the clearance from Director fire services is mandatory by virtue of provision of A.P. Apartments Act, 1987 and also the A.P. Fire Service Act,1999. The Section 13(3) of the A.P. Fire Services Act, 1999 prohibits any authority or officer competent to approve building plans before constructions under the relevant law for the time being from according approval except on production of a no objection certificate under sub-section (2)

thereof and any violation thereto is an offence under sub-section (4) read with section 26, thereof. The proposed building sanctioned by the respondents is of more than 15 meters and hence down by the relevant laws including multistoried Building Regulations and A.P. Fire Services Protection Act, 1999. But no such NOC required under section 13 of A.P. Fire Services Act, 1999 is obtained by the respondents 2 to 5 herein. These Acts and Laws including Zoning Regulations and the National Building Code are made in public interest and create a right in favour of neighbouring owners and cast a statutory public duty on the respondent authorities. No exemption can be granted by any authority in respect of these building laws. In fact, Clause (15) of the said G.O.Ms.No.423 clearly declares that "the Government or any other authority shall have no powers hereafter to relaxations any site from the provisions of the Building stipulations either in part or in total". Therefore, the alleged exemption under G.O.Ms.Nos. 33 and 483 and approval of plan under the impugned proceedings by the sixth respondent is illegal and without any jurisdiction.

13. It is further averred that G.O.Ms.No.483 is issued only for the purpose of specified roads in the area of Hyderabad Municipal Corporation. Hence, it has no application as such to the Municipal Corporation of Vijayawada at all. Even the G.O.Ms. No.33 dated 3-2-2001 says, if the permissible F.A.R. can be achieved with the stipulated set backs/coverage in such cases, the set backs and coverage shall be insisted as per the rules, it is was brought to the notice of the Respondents 1 and 2 by the Petitioner. And, G.O.Ms.No.33 clearly declares that under no circumstances, the relaxation should be granted for the purpose of enhancing the F.A.R. The permissible F.A.R.is specified in the G.O.Ms. No.423. The second respondent Municipal Corporation falls in category B in the table annexed to the said G.O. If the building is in below 1000 square meters area, the permissible F.A.R. up to the height of 18 meters is 1.40 only. However, the sanctioned plan clearly shows that the F.A.R. is 1.67 and the gross F.A.R. is 2.18. Significantly, when the actual extent is only about 950 square meters, the sanctioned plan shows as if it is in an extent of 1011.75 square meters. If the actual extent is taken into consideration, the F.A.R. is more. But, even otherwise, in view of the fact that the F.A.R. at the rate of 1.40 under G.O.Ms. No.423 can be achieved, there is absolutely no need for any amount of relaxation under G.O.Ms.No.33. Thus, the action of the first respondent is contrary to even G.O.Ms. No.33.

14. It is further stated that the G.O.Ms.No.33 is incompetent and without jurisdiction. It is submitted that the Building Bye-Laws are framed under the Municipal Corporation Act and Urban Areas Development Act. There is no provision for relaxation in the Hyderabad Municipal Corporation Act, 1955 or A.P. Urban Areas (Development) Act, 1975 or in the Vijayawada Municipal Corporation Act, 1981 or A.P. Fire Services Act, 1999 and therefore, the provisions, regulations and the rules made there under cannot be relaxed at all. At any rate the power to grant exemption under the G.Os and Rules is exclusively vested in the Government. This power of relaxation was relinquished as a matter of Policy by the Government itself. And, the Government being a delegatee under the Rules cannot further sub-delegate the power as such action is ultra vires the Statute and hence, the G.O.Ms.No.33 is liable to be declared as illegal. Further, the G.O.Ms.No.33 gives arbitrary power to the supporting officers and suffers from the vice of excess delegation. At any rate, the mandatory provisions of the Building Laws made in Public Interest can not be relaxed by any authority.

15. It is also stated that with the active support of the 2nd respondent, the Respondents 3 to 5 again started making illegal constructions without maintaining any set backs whatsoever, much less as required under aforesaid laws. Though an illusory set back of one and a half feet is shown in the sanctioned plan, the Respondents 3 to 5 are practically covering the entire land without keeping any set backs on account of the F.A.R. illegally permitted. The construction proposed by the Respondents 3 to 5 is possible only by covering the entire existing land.

16. 1st respondent filed counter affidavit taking specific stand that there is no prohibition under law to construct multi-storied building. Further, specific stand was taken that the building permission was sanctioned for 845.93 square meters and as per the sanctioned plan Respondents NO.3 to 5 have to leave 1.05 meters which is equivalent to 3 meters and in fact they started construction of the building by leaving the said open space and the authorities granted building permission by invoking provisions contained in G.O.Ms.No.33, dated 3-2-2001, which has been made applicable to the Urban Development Authority by G.O.Ms.No.484, dated 1-11-2002. The representations in this regard also had been referred to and the other allegations had been denied. Further, it was averred that the construction of the buildings are governed by the provisions of the Zoning Regulation Act. It is stated that the constructions of the buildings are governed by the provisions of the zoning

Regulations prepared for the Vijayawada Municipal Corporation area. The Multi storied Building Regulations 1981, the Municipal Corporation Building Bye-laws 1981 are superceded by the Zoning Regulations. Subsequently, the Government keeping the public interest and other relevant considerations issued the Rule regarding rationalization of floor area ratio and other standards of building requirements in G.O.Ms.No.423, dated 31.07.1998. These Rules also will apply to the Vijayawada Municipal Corporation limits. These rules are general in nature and will be insisted in the normal conditions. It is further averred that some extraordinary situations also will occur or happened and for that extra situations the insisting of the normal rules will not be practicable and unless some relaxation are granted it will be highly impossible for the owners of the property to enjoy their properties. One such extraordinary situation is when some portion of the owner of the property was affected by the road widening, they will be prevented from constructing any building on the remaining area. In several areas of the Corporation it became necessary to widen the roads so as to enable the public to smoothly travel on those roads. The widening of the roads is also public purpose and it is also convenient for the public and smooth flow of the traffic. To acquire huge extent of land by payment of compensation means practically preventing the Authority from widening the existing roads. It is highly impossible for the Government or the Authorities to pay the enormous compensation to acquire the properties of the citizens for the purpose of road widening. Hence in the interest of the public and keeping the public convenience and safety, the Government adopted a scheme where under the land of the citizen will be taken on free of cost for the purpose of widening the roads and in compensation thereof the owner shall be given some reasonable incentives, such as permission to construct additional area (FAR) and relaxing the rules relating to set backs and coverage. These are the extraordinary cases in which relaxations are permissible to the normal rules. The persons whose properties are affected in the road widening programme and who surrendered their land on free of cost will fall into a different category and different treatment is permissible as per Article 14 of the Constitution of India. While relaxing the rule of set back and coverage, the Government has taken care to protect the interest of the public also. In the G.O.Ms.No.33 it was specifically stated that the relaxation will be granted only in case where the permissible FAR cannot be achieved on plots after road widening. The present case will fall in that category. Moreover, in the zoning regulations applicable to the Vijayawada in the multi-storied Building Regulations as well as in

the Building Bye-laws, there is a specific provision empowering the Government to grant relaxation from the rules. The vested right of the petitioner is not taken away in any manner with regard to easementary right of light, air and fire accidents. The A.P. Apartments Act will have no application for the grant of Building permission. On the other hand, as the provisions of the said Act permissions has to be obtained from the authority or the Urban Development Authority before starting constructions. As per Section 25 of the said Act the owner of the Apartment shall be required to provide all the Fire preventive devices in consultation with the Director General of Fire Services. There is no necessity of obtaining the 'No Objection Certificate' from the Authorities under the Fire Services Act, 1999 before the Building Plans are sanctioned. As per Clause 14 of the G.O.Ms.No.423, dated 31.07.1998 the provisions of Multi-storied Building Regulation are excluded to the Buildings with stilt + 5 floors of 18 meters height.

17. According to him clause 15 of the G.O.Ms.NO.423, dated 31-7-1998 has no application in view of G.O.Ms.No.33 dated 3-2-2001. G.O.Ms.No. 484 will apply to the Vijayawada Municipal Corporation also. The plan was sanctioned with the additional FAR as provided under G.O.Ms.No.33 and the sanction plan is not contrary to the said G.O.

18. Respondents 3 to 5 also, in the counter affidavit in substance had taken the same stand.

19. 6th respondent, Government of Andhra Pradesh represented by Secretary filed a counter affidavit wherein it was averred that in the year 1997, the Commissioner and Special Officer, Municipal Corporation of Hyderabad has stated that Municipal Corporation of Hyderabad has taken up major programmes for Road widening in Twin Cities of Hyderabad and Secunderabad besides junction improvement and stated that a number of properties have been demolished for the road widening programme and the local people are cooperating with the local body by giving affected portion and they are emphasizing to give permissions quickly within the left over space after road widening. Therefore, the Commisisoner and Special Officer, Municipal Corporation of Hyderabad has requested the Government for issue of delegation of powers to relax the Zoning Regulations to facilitate him to take on the spot decision for speedy road widening programme and grant permission for reconstruction of buildings.

20. It is further averred that Government after careful examination of the above proposal and also keeping in view the road widening programme taken up in the State have considered the request of Commissioner, Municipal Corporation of Hyderabad and issued orders in G.O.Ms.No.15 M.A. Dt. 15-1-1998 by delegating powers to Commissioners of all Municipal Corporations, Municipalities/Vice-Chairman of Urban Development Authorities in the State to grant certain incentives in terms of granting additional FSI and relaxation of set backs/coverage to the extent required (when the permissible FAR cannot be achieved with the stipulated setbacks (in plots of less than 500 square meters). As per this G.O. in road widening cases whenever the land is surrendered on free of cost to the local body then a) In addition to the permissible FSI to the total extent of the plot area additional FSI of 0.5 shall be considered to the extent of the land affected in road widening surrendered free of cost and b) Wherever permissible FSI cannot be achieved on plots upto 500 square meters after road widening with the stipulated set backs as per rules and Zoning Regulations, the set back relaxation and coverage can be considered by the Commissioners of Local Body to utilize the permitted FSI, and while exercising the above powers the Local Body shall ensure public safety, smooth flow of traffic and also ensure proper building line.

21. It is further stated that after issue of above orders, in 1998 the Commissioner, Municipal Corporation of Hyderabad has requested the Government to consider the extending the above relaxation powers in road widening cases without limitation of plot area and to be made applicable wherever the land is surrendered free of cost for road widening purpose. The request of the Commissioner, Municipal Corporation of Hyderabad was considered favourably in view of the road widening programme taken up by the Municipal Corporation of Hyderabad and accordingly orders were issued in G.O.Ms.No.483 M.A. dated 24-8-1998 authorising the Commissioner, Municipal Corporation of Hyderabad to grant additional FAR to an extent of 1.0 (earlier o.5) over the land affected in road widening and to consider the relaxation of Setback and Coverage to the extent required irrespective of the plot area when the permissible FAR cannot be achieved with the stipulated setbacks.

22. It is further averred that later in the year 2000, the Commissioner, Municipal Corporation, Guntur has requested the Government to extend the above relaxation

powers to Guntur Municipal Corporation also so as to enable him to take up the road widening programme affectively. Government after careful consideration of the matter and also keeping in view the road widening programme being taken up by the all Municipal Corporations in the State has extended the above G.O. to all other Municipal Corporations o the state and issued orders in G.O.Ms. No.33 M.A. dated 3-2-2001. As per the said G.O. the Commissioners of all Municipal Corporations were authorized to grant additional FAR to an extent of 1.0 (earlier o.5) over the land affected in road widening and surrendered on free of cost and to consider the relaxation of Setback and Coverage to the extent required irrespective of the plot area when the permissible FAR cannot be achieved with the stipulated set backs.

23. Further, it is submitted that in the said G.O. it was stipulated that

i. while exercising the above powers, the Municipal Corporation shall finalise the suitable building line i.e. front setback for the complete portion of the road taken up for widening keeping in view the developments existing on the ground, feasibility and smooth flow of traffic and notify the same for the benefit of owners of the sites affected in road widening. No construction shall be allowed in violation of such notified building line;

ii. While exercising the above powers the Municipal Commissioner shall ensure public interest, safety and smooth flow of traffic; and

iii. The Commissioner of Visakhapatnam, Vijayawada, Guntur, Rajamundry, Kurnool and Warangal shall constitute a Committee with Municipal Commissioner as Chairman, Regional Director of Municipal Administration, Regional Deputy Director of Town Planning, Deputy City Planner i.e. Head of the Town Planning Wing and Municipal Engineer as Members for giving the permission for reconstruction/construction where the land is surrendered on free of cost.

24. It is further stated that the above G.O. was issued with a view to facilitate the road widening programme being taken up by the local bodies. But, at any cost this G.O. neither entitles any individual to demand for set back relaxations as required by him

nor authorizes the Commissioners to give relaxations as sought for by any individual and the request of the each individual has to be decided on merits of each case and while exercising the above powers, the Commissioner or the Committee so constituted under the said G.O. shall ensure public interest, safety and smooth flow of traffic etc. If the Committee feels that the relaxations sought for by any applicant who has surrendered the land on free of cost, is against the public interest, safety and smooth flow of traffic, then same has to be invariably rejected. Further by virtue of this rejection if any land owner/building owner withdraws his willingness to surrender the road widening portion on free cost then same has to be acquired by following due process of law and in no circumstances the buildings shall be allowed against the public interest and safety and smooth flow of traffic.

25. Thus, in the counter affidavit, the Government justifies the action in issuing the G.O.Ms. No.33 referred to supra.

26. In the writ petition filed by Respondent NO. 3 to 5 questioning the cancellation, substantially the same grounds have been repeated that the cancellation is in violation of principles of natural justice and the sanctioned plan is in accordance with law and virtually several details relating to the obtaining of the sanctioned plan and the G.Os in relation thereto had been referred to and specific stand was taken that the said G.Os. had been issued as a matter of Policy decision and the same is not in violation of Articles 14, 19 and 21 of the Constitution of India. In the counter affidavit filed by the 1st respondent, the same stand had been repeated and the 3rd respondent filed counter affidavit repeating the same stand taken by them in writ petition 15716 of 2004. Before further proceeding with the matter, it may be appropriate to have a look at the relevant G.Os. at the first instance. G.O.Ms.No.33 M.A.,Municipal Administration and Urban Development (M2) Department reads as hereunder:

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Municipal Corporations –Road Widening – delegation of powers for according certain incentives for re-construction-construction – Orders – issued.

MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (M2) DEPARTMENT

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G.O.Ms.No.33 MA., Dated:3rd February,2001.

Read the following:

1. *G.O.Ms.No. 15 MA., dated 15-1-1998.*
2. *G.O.Ms.No. 483 MA,dated 24-8-1998.*
3. *From the Commr. Mpl.Corpn., Guntur*
4. *Rc.No.1/2000/CP/G1, dated 31-8-2000.*

1. In the Government orders 1st read above, certain powers have been delegated to the urban local bodies/Urban Development Authorities to grant additional F.A.R. to an extent of 0.5 over the land affected in road widening and surrendered free of cost and in such case to consider the relaxation of setbacks and coverage to the extent required when the permissible FAR cannot be achieved on plots upto 500 sq.mts. This was restricted where major stretches of road widening have been undertaken by the Local Authority and not in isolated cases.

2. In the reference 2nd read above, on the request by the Commissioner and Special Officer Municipal Corporation of Hyderabad further orders have been issued authorizing the Commissioner and Special Officer, Municipal Corporation of Hyderabad to grant additional F.A.R. to an extent of 1.0 over the land affected in road widening and surrendered free of cost for constructing/reconstructing building as per notified land use of Master Plan/Z.D.P. and in such cases to consider the relaxation of setbacks and coverage to the extent required when the permissible FAR cannot be achieved.

3. In the reference 3rd read above Commisisioner, Municipal Corporation, Guntur has requested the Govt. to extent the above said relaxation powers to Guntur Municipal Corporation also in road widening cases wherever the land is surrendered free of cost in the alignment of notified M.P/Z.D.P. roads.

4. Government after careful consideration of the above matter and also keeping in view the road widening programme proposed by the Guntur Municipal Corporation and to facilitate widening of roads in other Corporations on the line of Municipal Corporation of Hyderabad have decided to delegate the powers to the extent given below to the all Commissioners of Municipal Corporations Viz., Visakhapatnam, Vijayawada, Guntur, Rajahmundry,

Warangal and Kurnool in modification to G.O. first read above.

A)F.A.R. : In addition to the permissible FAR to total extent of the plot area, additional F.A.R. of 1 shall be considered to the extent of the land affected in road widening and surrendered free of cost for construction/reconstructing building as per the notified land use of Master Plan/Z.D.P.

B) Set-back & Coverage:

i)Wherever permissible FAR can not be achieved on plots after road widening and land surrendered free of cost. With the stipulated set backs as per rules and Zoning Regulations the relaxation of set back and coverage can be considered by the Commissioner. However, if the permissible FAR can be achieved with stipulated setbacks/coverage in such cases setbacks and coverage shall be insisted as per the rules.

ii) While exercising the above powers Municipal Corporations shall finalise a suitable building line i.e. front set back for the complete portion of the road taken up for widening keeping in view the developments existing on the ground feasibility and smooth flow of traffic and notify the same for the benefit of owners of the sites affected in road widening. No construction shall be allowed in violation of such notified building line.

iii) While exercising the above powers the Municipal Commissioners shall ensure public interest, safety and smooth flow of traffic.

iv) These orders are applicable for the sites affected in road widening as per notified M.P./Z.D.P. roads and where affected land is surrendered free of cost.

5. The Commissioners of Municipal Corporations of Visakhapatnam, Vijayawada, Guntur, Rajahmundry, Kurnool and Warangal shall constitute committee as given below for giving the permissions for reconstruction/construction where the land is surrendered free of cost as per the above orders.

1. Municipal Commissioner Chairman

2.Regional Director of Municipal Administration . Member

3. Regional Deputy Director of Town Planning . Member

4. Deputy City Planner . Member

5. Municipal Engineer . . Member

The delegation of powers referred above shall be exercised only by the Municipal Commissioners and shall not be further delegated to any other officers.

(BY ORDER AND IN THENAME OF THE GOVERNOR OF ANDHRA PRADESH)

LINGARAJ PANIGRAHI

SECRETARY TO GOVERNMENT"

27. G.O.Ms.No. 483 M.A. dated 24-8-1998 reads ;

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Municipal Corporation of Hyderabad – Road widening and demolition of affected properties – Delegation of Powers for according certain relaxations to Building Regulations / Zoning Regulations – Orders –Issued

MUNICIPAL ADMINISTRATION 7 URBAN DEVELOPMENT (M1) DEPARTMENT

G.O.Ms.No.483 M.A. Dated: 24th August,1998.

Read the following:

1. *G.O.Ms. No.15, M.A., dt.15-1-1998.*
2. *From the C/MCH, Lr.No. 270/TPS/MCH/ HO/97-98/101, DT. 3-4-1998.*
3. *From theC/MCH, Lr.No.270/TPS/MCH/ HO/97-98/275,dt.30-6-1998.*

4.From the C/MCH D.O.Lr. No.270/TPS/ MCH/HO/907/98/321,dt. 24-7-98.

5.G.O.Ms.No.423, M.A., dt.31-7-98.

…..

ORDER:

In the Government orders 1st read above, certain powers have been delegated to the Local Authorities/Urban Development Authorities to relax the Zoning Regulation in respect of F.A.R. to an extent of 0.5 over the land affected in road widening and surrendered free of cost and in such cases setbacks and coverage to the extent required when the permissible FAR cannot be achieved on plots upto 500 sq. mtrs. This was restricted to the cases where major stretches of road widening have been undertaken by the Local Authority and not in isolated cases.

2. In the reference 2nd to 4th read above the Commissioner and Special Officer, Municipal Corporation of Hyderabad has requested to consider for extending the said relaxation powers in road widening cases without limitation of plot area and to be made applicable wherever the land is surrendered free of cost in the alignment of notified M.P./Z.D.P. roads in Municipal Corporation of Hyderabad area.

3. Municipal Corporation of Hyderabad has further informed that most of the owners of the properties whose sites area affected in road widening are coming forward for approval of building plans for commercial purpose as after road widening the site left over are useful for commercial purpose. Further, most of the structures along these roads where road widening has been taken up has already been developed as commercial use.

4. Therefore, the Commissioner and Special Officer, Municipal Corporation of Hyderabad has requested for orders authorizing to permit commercial uses along the (18) roads which have been taken up for widening by Municipal Corporation of Hyderabad as per notified M.P./Z.D.P. and has enclosed a list of 18 roads/junctions where major road widening has been taken up by the Municipal Corporation of Hyderabad.

5. Government after careful consideration of the above proposals and also keeping in view the road widening programme staken up by Municipal Corporation of Hyderabad have decided delegate the powers to the extent given below to the Commissioner and Special Officer Municipal Corporation of Hyderabad in modification to G.O. 1st read above.

A. *F.A.R.: In addition to the permissible F.A.R. to the total extent of the plot area Addl. F.A.R. of 1.00 shall be considered to the extent of the land affected in road widening and surrendered free of cost for constructing/re-constructing building as per notified land use of Master Plan/Z.D.P.*

B. *Set-back & Coverage: i)Wherever permissible Far cannot be achieved on plots after road widening with the stipulated set backs as per rules and Zoning Regulations the relaxation of set back and coverage can be considered by the Commissioner of Municipal Corporation of Hyderabad.*

ii) While exercising the above powers the MCH shall finalise a suitable building line (i.e. front setback) for the complete portion of the road taken up for widening keeping in view the developments existing on the ground, feasibility and smooth flow of traffic and notify the same for the benefit of owners of the sites affected in road widening. No construction shall be allowed in violation of such notified building line.

iii) While exercising the above powers the Municipal Corporation of Hyderabad shall ensure public interest and safety and smooth flow of traffic.

iv) The relaxation powers referred above are applicable for the sites affected in road widening as per notified M.P./Z.D.P. roads and where affected land is surrendered free of cost.

C(i) The Commissioner & Special Officer, Municipal Corporation of Hyderabad is authorized to grant permissions to construct/re-construct of the buildings for commercial use though the land use is earmarked for residential or other uses except recreational use as per notified M>P./Z.D.P. and where the land is surrendered free of cost for road widening in the stretches of (18) roads as given in annexure and where the site is having direct frontage to the said road. Commercial use shall be restricted to the extent of the depth of such plots only and in such cases the additional FAR on the land surrendered free of cost for road widening shall be restricted to 0.50 only.

Municipal Corporation of Hyderabad shall furnish a copy of all such sanctioned plans to the Vice Chairman, Hyderabad Urban Development Authority for necessary further action and to update the M.P./Z.D.P. from time to time.

ii) The Commissioner and Special Officer, Municipal Corporation of Hyderabad shall collect development charges/conversion charges along with other charges as per rules while according such permissions in the stretches of (18) roads as given in annexure.

The relaxation powers referred above shall be exercised only by the Commissioner, MCH, and shall not be further delegated to any other Officers.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

N.S.HARIHARAN

PRINCIPAL SECRETARY TO GOVERNMENT"

28. Likewise G.O.Ms.No. 484, dated 1-11-2001 reads as hereunder.

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Vijayawada, Guntur,Tenali, Mangalagiri Urban Development Auithority, Vijayawada-Vijayawada City Development Plan-Delegation of certain powers to Vice-Chairman, VGTMUDA as was stipulated in G.O.Ms.No.33 M.A.dated 05-02-2001-Orders-Issued.

MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT(H2) DEPARTMENT.

G.O.Ms.No.484, M.A. Dated: 1-11-2002

Read the following: 1.G.O.Ms.No.33, MA-dated 03-02-2001.

2.From the Vice Chairman, VGTMUDA, Letter .No.C2-

172/01,dated 12-07-2002.

ORDER:

In the G.O.first read above, orders were issued authorizing the Commissioners of Vijayawada, Visakhapatnam, Guntur, Rajamundry, Warangal, Kurnool to give certain incentives in terms of additional FAR/Relaxation of Setbacks/Coverage to the persons who have surrendered the land on free of cost for widening of any Master Plan Road/Zonal Development Plan Road to facilitate the road widening programme being taken up by the Municipal Corporations.

2 As per the above G.O., the Commissioners of the concerned

Municipal Corporation has to constitute a committee with Regional Director,Municipal Administration, Regional Deputy Director of Town Planning, Deputy City Planner and Municipal Engineer as Members under the Chairmanship.

3 In the reference second read above, the Vice-Chairman Vijayawada, Guntur,Tenali,Mangalagiri Urban Development Authority has stated that as a part of Vijayawada City Development Plan they are undertaking widening of Karl Marx Road and Mahatma Gandhi Road and also proposing to widen and develop certain internal roads in the Vijayawada City. Further stated that many land owners abutting to the above road are willing to surrender the land on free of cost for the purpose of road widening and requested the Government to delegate the powers to him for granting incentives.

4 The Government after careful examination of the matter hereby delegate the powers to Vice-Chairman, Vijayawada, Guntur,Tenali, Mangalagiri Urban Development Authority authorizing him to give incentives to the extent given in G.O. first read above to the persons who have surrendered the land on free of cost for widening of any Master Plan road/Zonal Development Plan road being taken up by VGTUDA. in modification to G.O.first read above.

5 The Vice-Chairman, Vijayawada, Guntur,Tenali, Mangalagiri Urban Development Authority shall constitute committee as given below for giving the permissions for reconstruction/construction where the land is surrendered free of cost:

a. Vice-Chairman, VGTMUDA : Chairman

b. Municipal Commissioner,VMC : Member

c. Chief Planning Officer, : Member . VGTMUDA Convenor

d. Depy. City Planner VMG : Member

6 Further while exercising these powers the Vice-Chairman, Vijayawada, Guntur,Tenali, Mangalagiri Urban Development Authority.

a. *Shall finalise a suitable building line for the complete portion of the road taken up for widening keeping in /view the developments existing on the ground, feasibility land smooth flow of traffic and notify the same for the benefit of owners of the site as affected in road widening and no constructions shall be allowed in violation of such notified building line;*

b. *Shall ensure public interest, safety and smooth flow of traffic.*

7. *The delegation/powers referred above shall be exercised of only by the Vice-Chairman, Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and shall not be further delegated to any other officer."*

29. It may be convenient to have a look at the order initially made in Writ Petition No. 15716 of 2004. The said order reads as hereunder.

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"ORAL ORDER:

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(Per The Honourable Sri Devinder Gupta, the Chief Justice)

The petitioner is questioning the action of respondents in having permitted Respondents 3 to 5 to raise construction without set backs, which is contrary to the zonal regulations in respect of set

backs. Petitioner sought direction to declare G.O.Ms.No.33 of Municipal Administration and Urban Development Department, dated 3.2.2001 as illegal and contrary to various provisions and to declare the plan sanctioned by the first respondent and permit dated 29.7.2004 as illegal with further directions to respondents not to allow the Respondents 3 to 5 to make any construction in the premises bearing No.45-1-3/2,Gundala, Vijayawada without maintaining the minimum set backs of four meters around the proposed building of Respondents 3 to 5.

Since copies of the petition have been served on the Respondents 1 and 2 and 6 and 7, Writ Petition was taken-up.. Since the name of counsel for the Respondent NO.1 was not shown in the cause list, the same was directed to be shown today, and, the same has been shown in the cause list, but, Respondent No.1 is absent. Learned Standing Counsel for Respondent No.2 states that he has got instructions from the Commissioner, Vijayawada Municipal Corporation, and the following are his instructions.

" Sri P.G.K.Murthy and Others have applied to the Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority(V.G.T.M.U.D.A.) for grant of relaxation of Zoning Regulations in respect of set backs for the proposed construction of apartment building with Stilt floor for parking and 5 upper floors for residential flats at D.No.45-1-3/2,Gunadala in the name of Sai Residency Apartments vide their application dt:15-3-2004 . The site under reference is situated abutting to Eluru Road (Kaarl Marx Road) which is proposed to widen to 120' as per Master Plan. The Government vide G.O.Ms.No.33, M.A.dated 3.2.2001 have delegated certain powers to the committee headed by the Commissioner to grant additional floor area and relaxation of certain Zoning regulations in the sites where the owners give the road widening portion at free of cost to the local body. As the widening of Eluru Road and Bundar Road in Vijayawada are taken up by V.G.T.M.U.D.A., the Government have delegated similar powers to Vice-Chairman,V.G.T.M.U.D.A., vide G.O.Ms.No.484 M.A. dt.1.11.2002 to grant permissions for building constructions in the sites abutting to these two roads. Accordingly, the V.G.T.M.U.D.A. after placing application under reference in the Committee, approved plans for the said apartment building with relaxation of set backs vide B.P.No.121/2004 in R.C.2.906/2004,dt.29.7.2004. As per the approved plan, the set back of 1.5 mtrs. On rear side is shown

after relaxing the set back of 2.5 mtrs. On this side for surrendering of road widening portion of 165.82 square meters at free of cost.

On commencing of construction of rear side part of the building, the adjacent resident Sri A.Purushotham has raised objection vide his Complaint No.35027/2004, dt.3-7-2004 and 28-7-2004 that the construction is commenced in deviation to the approved plan by covering OTS ducts and that he will suffer from lack of ventilation due to the relaxation granted by the authorities to the proposed apartments building. As the builder has commenced the construction based on the permission granted by the V.G.T.M.U.D.A., the matter regarding objection raised by the neighbour has been brought to the notice of the Vice Chairman, V.G.T.M.U.D.A., through D.O. letter No.Rc.G5.15482/80,ddt.30-7-2004 and requested the Vice-Chairman,V.G.T.M.U.D.A. to reconsider the relaxation granted to the building under reference. Accordingly, this subject was kept in the Agenda for the next meeting conducted on 15-9-2004 and I have personally attended the said meeting along with City Planner and it was decided by the Committee to revoke the relaxations granted and to direct the application to submit revised plans. According to the decision taken in the committee meeting the construction work commenced by the applicant has been stopped. The application commenced the construction in only 50% of the site on rear side and laid stilt floor slab covering the ventilation ducts. Due to intervention of the department, the said construction is totally stopped at this stage and applicant is required to submit revised plan with sufficient set backs without inconvenience to the neighbour and to submit to the building committee for further consideration."

In view of what has been stated by the learned counsel for Respondent No.2 that the Committee has decided to revoke the relaxation granted and to direct respondents 3 to 5 to submit revised plan, and, construction work has been directed to be stopped, no other or further direction deserves to be issued in this Writ Petition, except, by directing respondents 1 and 2 that they will ensure that no construction is permitted to be carried out by respondents 3 to 5 in accordance with old sanctioned plan, and, their revised plan submitted will not be taken up for consideration and no decision will be taken thereon till the respondents 3 to 5 demolish the construction raised by them in the set backs. Ordered accordingly.

The Writ Petition stands disposed of . No costs."

30. On a prima facie reading of the order of cancellation referred to supra, none of the grounds which are being ventilated by the petitioner had been referred to nor had been relied upon by the Urban Development Authority. But, however, it was specified that they laid stilt without leaving open to sky which is against the sanctioned plan in this regard and show cause notice was issued under Section 42(1) and 43(1) of the Act and it was further stated that the Commissioner, Vijaywada had written a letter to the said office for refusing the issue of relaxation of setbacks and the office had taken a decision in the committee meeting in accordance with the rules and regulations. Further they had not removed the slab put up in the OTS area as ordered by their staff. Hence, they were informed that the approved plan given to them by giving relaxation of setbacks had been cancelled and they were directed to revise the plan. They were further directed not to make any construction unless the revised plan is granted.

31. The learned counsel for the Writ petitioner placed strong reliance on Sections 12,13,14,57 of A.P. Urban Areas Development Act and Zoning Regulations and Sections 2(h) and 13 of A.P. Fire Services Act, 1999 and Section 3(a) and 3(c) of A.P. Apartments Act and Rule 15 of the Rules in relation thereto and complained that these are the contraventions by virtue of which the approved plan itself is not in accordance with law and hence the cancellation is sustainable. No doubt, the very foundation relating to the said action is G.O.Ms.No.33 and the same had been questioned in the Writ petition. G.O.Ms. 33 already had been referred to supra. It is the stand taken by the Government that G.O.Ms. 33 was issued as a Policy measure exercising power under Section 59 of the A.P. Urban Development Authorities Act. Reliance is placed on a decision of a Division Bench of this Court in ***Dr. C.Kulsum Reddy Vs. State of A.P. Municipal Administration and Urban Development (ML) Department*** wherein the Division Bench following ***Ram Jawaya V. State of Punjab*** and distinguishing the decision in ***Consumer Action Group Vs. State of Tamil Nadu*** while dealing with G.O.Ms. No. 419 M.A. and UD (ML) Department, dated 30-7-1998 relating to unauthorized constructions held :

> "*The last argument which was made by the learned Additional Advocate General was that in terms of Article 154 of the Constitution the Government has an executive power to issue*

such directions and the impugned G.O.is referable to Article 154. This is settled law that the executive power would not be available to the Government to defeat a statute. Ordinarily the executive power is the power which is exercised by the executive for the residual functions of the Government that remain with it after the legislative and judicial functions are taken away. If the State Government is empowered under a definite entry to legislate and there isno legislation it may exercise the power but once there is legislation the Government cannot use its executive power to defeat the legislation. The only way in such a situation is amendment in the legislation. This is settled law and the Courts have consistently taken this view that when a power is sought to be exercised in a particular way by the legislation the executive has to follow the methodology laid down by such legislation. In this regard we may refer to a judgment of Supreme Court in Ram Jawaya V. State of Punjab. It is a Constitutional Bench judgment which has not undergone any major changes to our knowledge from 1955. We would like to quote para 12 of the judgment. The Hon'ble Chief Justice B.K.Mukherjea as His Lordship then was speaking for the Court said;

". It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers to departmental or subordinate legislation when such powers are delegated to it by the legislature.

It can also, when so empowered, exercise judicial functions in a limited way. The executive Government however, clan never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws"

The laws made by the legislature are bound to be followed by everybody including the Government. Therefore, we are of the

considered view that the impugned G.O. has been issued without any authority of law."

32. This G.O. is issued as a policy measure in exercise of power under Section 59 of the Act. In ***Krishnan Kakkanth Vs. Government of Kerala,*** the Supreme Court held:

> " *To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if abettor or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid "embarking on uncharted ocean of public policy".*

33. Strong reliance was placed on the decision of the Supreme Court in ***State of Punjab Vs. RamLubhaya Bagga,*** in this regard. No doubt submissions at length relating to the power to cancel when not specifically conferred on the authority were made and submissions also were made that power to sanction the plan would be taken as having implied power to cancel the permission granted by way of relaxation by virtue of G.O.Ms.No.33. The legality of G.O.Ms.No.33 also had been attacked in the light of the Urban Development Act. On a careful scrutiny of G.O.Ms. NO.33 it is clear that the G.O., had been issued by exercising powers under Section 59 of the Act. Though, the same had not been specifically referred to, the contention that such power is not there at all cannot stand to legal scrutiny. Inasmuch as the same has been introduced as a policy measure, it cannot be said to be irrational or against any statutory provision or violation of any of the constitutional provisions. The Division Bench in the above said decision first cited, no doubt held the G.O. questioned therein was issued without any authority of law but the same is distinguishable on facts. Apart from this aspect of the matter, Section 450 of Hyderabad Municipal Corporation Act, 1955 dealing with the power of Commissioner to cancel the

permission on material misrepresentation reads thus,

> *"450. Power of Commissioner to cancel permission on the ground of material misrepresentation by applicant:- If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433 or if the further information if any, furnished, he may cancel such permission and any work done there under shall be deemed to have been done without his permission."*

34. It is not the case of either of the parties that the Corporation has exercised such power in this regard. Apart from this aspect, before cancellation no notice in fact had been issued and no opportunity had been given to respondents 3 to 5 in this regard. The only ground of attack appears to be that without maintaining the setbacks, the building construction is being proceeded with. In ***Consumer Action Group Vs. State of Tamil Nadu, the*** Apex observed at para 38 as follows:

> *" We may shortly refer to the possible consequences of the grant of such exemption under Section113-A by collecting regularization fees. Regularisation in many cases, for the violation of front setback, will not make it easily feasible for the corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirements of side setback will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight a fire in a high rise building. The violation of floor space index will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire staircase and other fire prevention and fire fighting measures would seriously endanger the occupants resulting in the building becoming a veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularization is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens. This provision, as we have said, cannot be held to be invalid as it is within the competence of the State Legislature to legislate based on its policy decision, but it is a matter of concern. Unless check at the nascent stage is made, for which it*

is for the State to consider what administrative scheme is to be evolved, it may be difficult to control this progressive illegality. If such illegalities stay for long, waves of political, humanitarian, regional and other sympathies develop. Then to break it may become difficult. Thus, this inflow has to be checked at the very root. The State must act effectively not to permit such situation to develop in the wider interest of the public at large. When there is any provision to make illegal construction valid on that ground of limitation, then it must mean that the statutory authority in spite of knowledge has not taken any action. The functionary of this infrastructure has to report such illegalities within the shortest period, if not, there should be stricter rules for their non-compliance. We leave the matter here by bringing this to the notice of the State Government to do the needful for salvaging the cities and country from the wrath of these illegal colonies and construction".

35. In ***M.C.Mehta Vs. Union of India*** it was held by the Apex Court

" *The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large-scale violations have commenced and continue leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance with law and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law-abiders are suffers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the lawmakers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in view the norms of environment, health and safety, the Government and its agencies, if there was genuine will, could have helped the industry and workers by relocating industries by taking appropriate steps in the last about 15 years. On the other hand, it encourage illegal activities."*

36. Likewise in ***Corporation of Calcutta Vs. Mulchand Agarwala*** it was observed by the Apex Court at para 7 and 8 as follows:

" It was next argued by learned counsel for the respondent that it was open to the Corporation to have asked for demolition of the building in the proceedings taken by it under S. 488 and as it did not ask for it and was content with the imposition of fine, it was precluded from claiming that relief in the present proceedings. This argument is based on S. 536, which is as follows:

"Whether under this Act or under any rule or by law made there under any person is liable in respect of any unlawful work,

a)to pay a fine, and

b) to be required to demolish the work.

A Magistrate may, in his discretion and subject to the provisions of Ss. 363, 364 and 493, direct the said person to pay the fine and also to demolish the work

In his order dated 9-4-1954 the learned Chief Justice expressed a doubt whether the Corporation could apply for a demolition order, when instituting an application under S. 488 for breach of R.62 of Sch. XVII. We are inclined to share this doubt. What R.62 prohibits is the erection of a building without permission, and under that Rule, the breach is complete when the erection has commenced, without reference to whether the construction is being carried on or completed.

A question of demolition cannot therefore arise with reference to a breach of R.62l. It can arise only when the construction of the building is carried on or completed otherwise than in accordance with the terms of the permission or in breach of any of the provisions of the Act or the rules. Now, in the table annexed to S.488, while a breach of R.62 of Sch.XVII is made punishable with fine which may extend to Rs.200, there is no similar provision with reference to breach of Rr.3,14,25 and 32 of that Schedule.

But there is, instead, a provision that when a direction is asked for under S. 363 (1) for demolition, an order can be passed imposing fine which may extend to Rs.250. Under that section, it should be noted, an application for an order for demolition can be made on three grounds viz., 1) that the erection of building has been commenced without permission, (2) that it has been carried on or completed otherwise than in accordance with the terms of the permission, or 3) that it has been carried on or completed in breach of the provisions contained in the Act or the rules.

But, there is this difference between an application based on

ground No..1 aforesaid and one founded on grounds Nos. 2 and 3, that while a question of demolition cannot arise with reference to the former when the charge is commencement or the construction without permission – and at that stage no question of demolition of a building necessarily arises it does arise as regards the latter. Therefore, when an application is made under S. 488, whether an order could be made under S.536 for demolition will depend on the ground on which it is founded.

And, where, as in the present case, the application was based solely and exclusively on a breach of R.62 of Sch. XVII, no order could have been passed for demolition under S.536. It is immaterial for the present purpose that the building had been completed when the order was passed on 11-4-1951 on the application under S.488, because the power to pass an order under S.536 would depend on what the charge as actually laid in the petition was and not on what it might have been".

37. Reliance was also placed on the decision in ***Sarada Bai Vs. Smt. Shakuntala Bai ,*** wherein it was observed

" The learned counsel for the 1st respondent questions the locus standi of the petitioners to file the present Civil Revision Petition and submits that they cannot invoke Art. 227 of the Constitution for setting aside the impugned orders dated 6-12-1989 and 7-3-1990. He submits that they are not parties to the suit O.S.No. 1932 of 1985 or to E.P.No. 3 of 1988 and that they are not in any way affected by the impugned orders and therefore cannot question the impugned orders under Art. 227 of the Constitution. I do not agree. Whether the house of the 1st petitioner bearing No. 21-2-131/7 to 9 is opposite to the suit premises of the 1st respondent bearing No.21-2-142/1 to 4 or not, it cannot be disputed that the petitioners are neighbours to the the suit premises and they are in close proximity to the suit premises. In the reply affidavit filed by the 1st petitioner, she states that her house is situated to the west of the suit premises with only a road of about 12 feet width in between. She complains that the original width of the said road was 18 feet 9 inches but it was narrowed down on account of the encroachments made by the 1st respondent. Some of the petitioners along with certain others also filed O.S.No.2333 of 1985 before the Vth Assistant Judge, City Civil Court, Hyderabad questioning the constructions being made by the 1st respondent in the suit premises and the same is pending. The1st petitioner and another also filed O.S.No.979 of 1987 on the file of the IInd Assistant Judge, City Civil Court,

Hyderabad for a declaration that the 1st respondent was not entitled to make constructions contrary to G.O.Rt. NO. 1835 dated 29-10-1984 granted by the 2nd respondent and the same is also pending. The effect of the impugned orders in E.P.No.3 of 1988 and E.A.No.23 of 1990 is to regularize the constructions made by the 1st respondent which are being questioned by the petitioners. In their suits. It is their case that the 1st respondent is relying on the impugned orders in the said suits. Some of the petitioners also filed I.A.No.340 of 1985 to implead themselves as defendants in O.S.No.1932 of 1985 and it is the case of the petitioners that the said suit was referred to Lok Adalath without notice to them even when the said I.A. was pending and that a settlement was arrived at behind their back. Therefore it cannot be said that they have no locus standi".

38. Likewise in ***Om Prakash Gupta Vs. State of A.P.*** it was observed at paras 9,19 and 20 by one of us (G.Bikshapathy,J.

"The admitted facts are that the Petitioners 1 to 3 are the residents in the same locality and neighbours of the 3rd respondent. 4th petitioner is not related to the other petitioners. However, he is interested in the prosecution of the case against the 3rd respondent. It is not in dispute that the 3rd respondent purchased the house bearing NO. 21-2-142/1 to 4 having a total extent of 102 Square Yards. The Government issued orders of relaxation from zoning regulations to enable the 3rd respondent to construct the ground and first floors in G.O.Rt.No.1835 dated 29-10-1984. In pursuance of the said G.O., the 2nd respondent Municipal Corporation issued the permit in Permit No. 61/51 dated 28-11-1984 with the following conditions:-

1. *Permission accorded does not bar the applications of provisions of Urban Land (Ceiling and Regulation) Act, 1976.*

2. *Permission is accorded as per plan without any encroachments over Municipal or Government land.*

3. *As per G.O.(Rt) No. 1835 M.A., dated 29-10-1984 on conditions that ;*

   I. *The party should not project Balcony towards Northern and Western side.*

II. *The party should not disturb the privacy of the neighbour on opening of ventilation or window and should produce N.O.C. of neighbour.*

III. *The petitioner should not propose further vertical expansion at any time in future as per agreement executed.*

From this permission, it is manifest that the 3rd respondent had executed an agreement to the effect that she shall not propose any vertical expansion in future. After obtaining the permission from the Municipality, the 3rd respondent started construction of the premises. However, it is the case of the petitioners that the area falls under commercial zone. To enable the 3rd respondent to construct the first floor, zoning regulations were relaxed and permission was granted, but, according to the petitioners, the 3rd respondent also raised second floor construction and the 2nd respondent issued notices under Sections 461, 452 and 636 of the Act, against which the 3rd respondent filed O.S.56 of 1985 and obtained status quo orders. This was subsequently numbered as O.s.No.1932 of 1985 on the file of the II Assistant Judge, City Civil Court, Hyderabad. It appears that the suit was referred to Lok Adalat and it is understood to have been settled and in accordance with the settlement the suit ended in compromise decree dated 24-2-1986. It is necessary to extract the relevant portion on G.O.Rt.No.1835, Housing Municipal Administration and Urban Development Department, dated 29-10-1984. It reads

Under Regulation 12 of the Zoning Regulations 1981, the Government hereby relax the provisions of Regulations 9-2-1, 10 and 6-1-2 of the said regulations to the extent indicated below in favour of Smt. Shakuntala for change of roof of the ground floor and construction of first floor in P.No.21-2-142/1-4 at Gulzar House.

Z.R.9-2-1(i) To the full extent of 10'-00" towards Northern sides for ground and first floor.

ii) To the full extent of 10'-00 towards Eastern side for ground and first floor.

iv. *To the full extent of 5'-00" towards Southern side.*

10. Coverage: To the full extent.

6-1-2: To allow residential building in Commercial use Zone.

2. The relaxation in Para (1) above is subject to the following

conditions:

a. *The petitioner should not project balconies towards Western and Northern side.*

b. *The petitioner should not disturb the privacy of the neighbours on Eastern and Southern sides by way of opening of ventilations or windows and should produce 'No Objection Certificate' from them.*

c. *The petitioner should not propose further vertical expansion at any time in future.*

4. *The Special Officer, Municipal Corporation of Hyderabad is requested to take necessary action accordingly and issue a building permit to the petitioner.*

In terms of the settlement, the suit was decreed on 24-2-1986 in the following terms:-

1. *That the plaintiffs shall apply to the defendant Municipal Corporation of Hyderabad within three months from the date of decree for regularization of the suit constructions by levying compounding fee with requisite number of plans showing the unauthorized construction/ deviations and thereupon the defendant Municipal Corporation of Hyderabad shall regularize the construction by compounding the offence within three months from the date of submission of plans.*

2. *That the Plaintiff shall pay the compounding fee, permit fee, property tax arrears up to date and also betterment charges, if not already paid, within the time fixed by the Municipal Corporation of Hyderabad. This compounding shall be without prejudice to third party's right including the Municipal properties and the scheme of road widening.*

3. *That the Plaintiff shall not make any further construction in anticipation of compounding without specific permission of the Municipal Corporation of Hyderabad.*

It appears that the 3rd respondent contrary to the terms of the decree in O.S.No.1932 of 1985 started constructing second floor and filed E.P.No.57 of 1986 in the suit for regularization of all unauthorized constructions including the second floor. The learned II Assistant Judge dismissed the said E.P. on 5-10-1987 holding that the 3rd respondent was not entitled for execution of

the decree in view of the unauthorized constructions including that of the second floor and conversion of the use of the premises from domestic to commercial, and also on the ground that she had not paid the property tax arrears up to date. However, the 3rd respondent again filed E.P.No.3 of 1988 for the execution of the decree dated 24-2-1986 and the same was allowed by the Civil Court on 6-12-1989.

Admittedly, the 3rd respondent has committed number of violations. Even though the suit was filed and decree was obtained through the intervention of Lok Adalat, she did not even comply with the conditions mentioned in the decree. There was a clear condition in the decree that the 3rd respondent shall not make any further construction in anticipation of compounding without specific permission of the Municipal Corporation of Hyderabad. But, the 3rd respondent giving a complete go bye to the judgment and decree dated 24-2-1986 constructed first floor and subsequently third floor also. Though the Government issued G.O.Ms. No.87 dated 12-2-1992, it has to be seen whether the conditions have been complied with by the 3rd respondent. Even in the initial exemption granted by the Government, it was made clear that she shall not project balconies towards Western and Northern side and that the 3rd respondent shall not disturb the privacy of the neighbours. The most important condition is that the 3rd respondent should not propose further vertical expansion at any time in future and to this extent, the 3rd respondent has also executed an agreement. When those are the conditions and when those conditions have not been fulfilled, the 3rd respondent is not entitled to seek any sanction from the Municipality. Having committed before the Municipality that she shall not propose further vertical expansion, it is most unreasonable on her part to construct second and third floors and then make an application to the authorities for grant of permission and having waited for the expiry of statutory period to commence the construction is highly objectionable. Further grave irregularity that was committed by the 3rd respondent is that taking advantage of G.O.Ms.No.87 she filed an application for regularisation of unauthorized constructions. The Municipal Corporation of Hyderabad did not obviously bother to correlate the permit sanctioned earlier and regularized the constructions in a rather routine way. Had the Municipality perused the earlier sanction, they could have realized that second and third floor construction is not permissible as the 3rd respondent herself gave an agreement that she shall not propose second and third floors in future. To set at naught all these irregularities, the3rd respondent had withdrawn the civil

proceedings pending before the various courts including the Writ Petition before this Court on the sanction having been granted on 21-11-1992 but yet the question remains whether the entire construction is in accordance with law. There are no disputed facts in the instant case. The 3rd respondent has admittedly purchased the premises having 102 Square Yards and she is bound to make construction only within the said area in accordance with the rules and the sanction granted by the Municipal Corporation of Hyderabad. Even according to the counter of the 2nd respondent Commissioner, it is now made clear that even the ground and first floors of the house have not been regularized as the conditions mentioned in the G.O issued by the Government relaxing the zoning regulations have not been fulfilled. When such is the situation, the regularization of 2nd and 3rd floors cannot be said to be valid. As already observed by me the Corporation has not acted deligently. Regularisation of irregular constructions cannot be extended to encroachment either in Government land or other's land. One cannot encroach another's land and construct as he wishes and make application for regularization under G.O.Ms.No.87. It can only be done within the permissible limits of law. Under these circumstances, it has to be necessarily held that the entire construction is without any valid permission as on date. The Commissioner of Municipality has categorically stated that there is an encroachment on the public road and that the balconies and other constructions were made in gross violations of the sanction issued by the authorities in Permit No. 61/51 dated 28-11-1984. Accordingly, the latter Permit No. 405/66 dated 21-11-1992 is declared as illegal and invalid.

The ground reality as on today is that the 3rd respondent has constructed the entire premises with ground plus three floors and admittedly the entire construction is not backed by any valid permission. Even the very vertical construction of second and third floors is contrary to the commitment given by the 3rd respondent herself. Be that as it may since the constructions have already come up the only course left is to how best the construction should be regularized. The 3rd respondent who has taken the law in her hands cannot invoke the sympathy from this Court, more especially when she had constructed the second and third floors knowing fully well that she is not entitled to in the wake of her commitment. The public passage existing on the premises is also a narrow passage and the 3rd respondent has again encroached the passage and constructed the house,

number of balconies projections are constructed and thereby encroaching on the right of privacy of the neighbours. The construction of the building illegally and contrary to the law and the conditions imposed by the authorities pose serious threat to the neighbours' right and also a threat to public health. The transgression of building laws by the persons is an act of aggression on the rights of society. The Government was cautious enough in granting relaxation in 1984 itself by stating that the 3rd respondent shall not propose any vertical construction in future, but yet the 3rd respondent in gross violation of the said permit started construction. Though it is the case of the 3rd respondent that she has constructed on 102 square yards, it is now confirmed that the 3rd respondent has constructed on more than 102 square yards by encroaching either the Government land or other's land. It would not be open for the 3rd respondent to contend that even if she had encroached others land, so long as there is no objection from them, it would not be open for this Court to hold that the 3rd respondent is an encroacher. This contention cannot be accepted inasmuch as the 3rd respondent is bound to confine the constructions within the area of 102 square yards only. Simply because the neighbour for various reasons may not be staying in that place and the place was kept vacant, it does not mean that she can take undue advantage of the absence of the neighbour and make constructions as she likes. When the permission was specifically granted for construction over 102 square yards, it must be constructed only on that land and it cannot be extended to any other place, either on the public place or on the place of others. Any departure from the permit sanctioned by the Municipality should be treated as having deleterious effect on the health and well being of not only the neighbours but also the public who have a right to use the lane. The tendency of raising unlawful constructions and unauthorised constructions/ encroachments in the twin cities are required to be dealt with by firm hands and such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of neighbouring houses."

39. In ***Kamalamma Vs. Subba Rao*** LPA 117 & 147 of 1969 dated 27-6-1972, while dealing with Section 444 of Hyderabad Municipal Corporation Act and suit by adjacent owner against neighbour and Corporation, Sri S.Obul Reddy Justice and Sri G.Venkataramana Sastry Justice observed:

"Held Per Obul Reddi, J.: The action is misconceived. The Act does not confer any rights, express or implied, against neighbours who proposes to construct buildings in breach of the building rules. Under Chapter XII of the Act the Legislature has not intended to vest in a private individual also the right to have the building of a neighbour pulled down merely for the reason that there is some deviation from the sanctioned plan in the construction of the buildings. The fact that free passage of light and air to the adjacent building is diminished by way of another building coming up by its side will not necessarily lead to the inference that it is a matter affecting the general public. Chapter XII of the Act nowhere gives an indication that an adjacent owner of a building has an implied right of action against his neighbour, who has constructed a building in contravention of the provisions of the Act and the rules made there under. It is for the adjacent owner if he feels that there is any damage or injury to his amenities either in the matter of free flow of air and light or sanction for the reason that the plans of the proposed building of the neighbour are not in accordance with the Municipal laws, to move the High Court and obtain a writ of Mandamus against the Corporation to observe the Municipal Laws in the matter of sanctioning building plans for consideration. The fact that, in the instant case, the Corporation, in fact, acted upon his representations and directed demolition of the constructions that were coming up is not a ground for approaching the Court to obtain mandatory or perpetual injunction even if it be against the Corporation, after the building was constructed. In the instant case the Corporation, though proposed to take action against the defendants 1 and 2 for breach or violation of the building rules in constructing anew building, however eventually compromised its position with them accepting a penalty or compounding fee thus regularizing an irregular act of defendants 1 and 2. The Corporation thereby lost its right under the provisions of the Act to take any action thereafter against the defendants 1 and 2 and when the Corporation had lost its right by regularizing what was irregular the plaintiff cannot ask any relief against the Corporation for pulling down that portion of the building constructed without leaving a space of 3', much less against defendants 1 and 2.

Per Venkatarama Sastry J: There is no express provision in the Act imposing any duty enforceable by an aggrieved individual. In such a situation, an individual cannot sue for a breach of statutory duty, unless two conditions are satisfied viz.(1) unless, the statute imposes a duty enforceable by him and (2) unless the statute imposes a public duty. In this case the statute imposes a public

duty and not a duty enforceable by an aggrieved individual. It is not open to the Court to issue any mandatory injunction which would interfere with the right of the corporation either to condone the offence or compound the offence when the statute permits it".

40. Reliance also was placed on ***Divyanagar Plot Owners Association, Kachwanisingaram Vs. Government of Andhra Pradesh***, a judgment delivered by one of us (the Hon'ble Sri Justice G.Bikshapathy). Reliance was also placed on ***Friends Colony Development Committee Vs. State of Orissa*** where in illegal constructions under Orissa Development Authority 1982 had been dealt with by the Apex Court. At Paras 24,25 and 26 Apex Court held ;

" *Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces, the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. (For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence. 2d. Vol. 82).*

Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying

heavy penalties on such builders and there from develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

The application for compounding the deviations made by the builders should always be dealt with at a higher level by multimembered High Powered Committee so that the builders cannot manipulate. The officials who have connived at unauthorized or illegal constructions should not be spared. IN developing cities the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorized constructions."

41. Reliance was also placed on ***V.M.Kurian Vs. State of Kerala***. in ***Saddi Narasimha Reddi Vs. Commissioner Municipal Corporation of Hyderabad***, in ***Commssioner of Police, Bombay Vs Gordhandas Bhanji***., relating to the aspect of demolition and the guidelines in relation thereto. Reliance was also placed on a decision of ***3 ACES, a partnership firm Vs. Municipal Corporation of Hyderabad.***.

42. Submissions at length were made relating to the aspect of Public Interest Litigation and reliance was placed on ***Dattaraj Nathuji Thaware Vs. State of Maharashtra.*** It is not in controversy that G.O.Ms. No. 33 was issued as a policy measure and in the light of Section 59 of the A.P. Urban Development Authorities Act. There cannot be any doubt that the Government has power to cancel G.O.Ms. No. 33 and the same is not arbitrary or it cannot be said that the same is in violation of Articles 14 and 21 of the Constitution of India. Apart from this aspect of the matter, this G.O. was issued only as a policy measure keeping in view the larger interest of the public. In the order of cancellation, none of the grounds which have been canvassed by the writ petitioner had been referred to by the Urban Development Authority. PIL cannot be stretched too far equally concept of judicial activism. The Courts while exercising judicial review can exercise the same within its para meters and limitations. There is some controversy whether it is Public Interest Litigation or not. In fact, one of us (the Hon'ble Sri Justice P.S.Narayana) in the commentary on "Public Interest Litigation" at page 15 while dealing with the aspects to be

considered, had commented as follows:

1. *"While deciding matters concerned with "Public interest litigation", the Courts are expected to act with care and caution;*

2. *The Courts are bound to come to the rescue of weaker sections, downtrodden of the society where the grievances concerned with such sections of society are brought to the notice of the Court by way of "Public Interest Litigation".*

3. *"Public Interest Litigation" is not in the nature of "adversary litigation' but it is a challenge to Government and officers to make the basic human rights meaningful.*

4. *Courts must be careful to see that under the guise of redressing a 'public grievance', they should not encroach upon the sphere reserved by the Constitution to the executive and the Legislature.*

5. *Courts should not give scope to any one to indulge in reckless allegations under the guise of "public interest litigation".*

6. *Courts have to see whether the persons moving the Court have sufficient interest and whether there is 'public injury' and whether the act is a "bona fide" one.*

7. *Even in the domain of 'Public interest litigation", a third party will not be welcome to question statutory orders relating to property.*

8. *Courts must be slow and also should act carefully while dealing with "political questions' by way of 'public interest litigation'.*

9. *Courts should be reluctant to decide matters involving pure "political questions'.*

10. *Courts before dealing with such questions should carefully scrutinize whether such "political questions also involve the determination of any 'legal' or 'constitutional right' or obligation.*

11. *Courts must be very vigilant in deciding such matters since a clear demarcation in such matters into the categories specified in (9) and (10) may not be always possible.*

12. *Courts should be satisfied that the 'Public interest litigation is a 'bona fide' litigation and not a 'mala fide' one."*

43. Initiating action ventilating the grievance of private interests under the guise of

public interest cannot be permitted. A specific stand was taken in the counter affidavit filed by respondents No. 3 to 5 that because of the private dispute between the parties, the writ petitioner had resorted to file this litigation. No doubt if bona fide public would be affected by violation of building laws, Litigation can be maintained in public interest, but not otherwise. In ***Dattaraj Nathuji Thaware's*** case the Apex Court observed in paras 11,12 and 13 as follows.

> *". It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years persons suffering from undue delay in service matters – Government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc., etc., are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.*
>
> *.Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and or publicity*

seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or pubic injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the 'Public interest litigation' in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been under taken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers racial and ethnic minorities and others".

44. In the light of G.O.Ms. No.33 when the plan had been approved, the same cannot be cancelled at any rate. Cancellation without notice, apart from the grounds specified in the cancellation are totally untenable. It is no doubt true the neighbour has no locus standi to maintain the action in relation to contravention of any laws, provided

i)such contravention would affect his legal rights and not otherwise.

ii) Every deviation, minor or minute, cannot pave way to the cancellation of building permission.

iii) While cancelling such permission principles of natural justice may have to

be adhered to

iv) Competent Authorities may exercise discretion at the time of cancellation and such discretion should be exercised in accordance with law and not in an arbitrary or capricious way.

45. Authorities are always having liberty to see that the builder adheres and proceeds with the construction in accordance with the sanctioned plan and any violation thereof can be rectified in accordance with law. Deviations, unconcerned with infraction of rights of neighbour, may be complained of to the Competent Authorities and the Competent Authorities may have to take a decision to proceed with the same in accordance with law. Neighbours rights cannot be stretched too far so as to affect the rights of the owners of the property. It is needless to say that the builders, neighbours and the competent authorities under relevant statute may have to act within their para meters as per law, but not beyond thereto.

46. In the light of the aforesaid discussion, it is needless to say that the impugned order of cancellation questioned in Writ Petition No. 22354 of 2004 cannot be sustained. But, however, it is made clear that the competent authorities are at liberty to proceed with in accordance with law to see that the violations or contraventions to the sanctioned Building Plan are rectified and the construction be proceeded only in accordance with the sanctioned plan.

47. In the light of the said safeguards available to the writ petitioner, the writ petitioner cannot complain of several other aspects which are more concerned with the Urban development Authority vis-à-vis the builder. Inasmuch as the rights of the neighbour are limited only to the extent of the neighbour's right being affected by such contravention, if any, the same cannot be made a ground for cancelling the permission, inasmuch as this Court is inclined to uphold the validity of G.O.Ms.No.33. It is needless to say that the respondents No.3 to 5-writ petitioners in W.P.22354 of 2004 are bound to succeed and accordingly Writ Petition No. 22354 of 2004 is hereby allowed. However, it is made clear that the competent authorities are at liberty to initiate appropriate action for the purpose of rectifying the contraventions if any in the construction activity of Respondents No. 3 to 5 in Writ Petition No. 15716 of 2004. Except giving the said liberty no further relief can be granted in favour of the writ petitioner in W.P.No.15716 of 2004 and accordingly W.P.No.15716 of 2004 is disposed of, in the light of the aforesaid directions.

48. In the light of the foregoing discussion, the parties do bear their own costs.

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G.Bikshapthy, J.

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P.S.Narayana,J.

13th April, 2005.

KM

L.R.Copy to be marked

B/o

KM

ASSISTANT REGISTRAR

W.P.No. 22354 of 2004

That Rule nisi has been made absolute as above.

Witness the Honourable Sri Bilal Nazki, the Acting Chief Justice on this Wednesday this the thirteenth day of April, Two Thousand and Five.

ASSISTANT REGISTRAR

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(for his lordships kind perusal)

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THE HONOURABLER SRI JUSTICE G.BIKSHAPATHY

AND

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION NO : 15716 of 2004

AND

WRIT PETITION No. 22354 OF 2004

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APRIL, 2005.

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